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Supreme Court I.D. 87347
Attorney for Plaintiff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, et al.,	:	Case No. 18-23538 (RDD)
Debtors. ¹	:	
	:	
DARLENE STROHECKER,	:	
Movant	:	
v.	:	
	:	Motion for Relief from Stay
SEARS HOLDING CORPORATION, SEARS,	:	with Concurrence of Debtor
ROEBUCK & CO., KMART HOLDING	:	
CORPORATION, KMART OPERATIONS LLC,	:	
KMART CORPORATION, KMART OF	:	
WASHINGTON LLC, KMART STORES OF	:	
ILLINOIS LCC, KMART STORES OF TEXAS	:	
LLC, KMART OF MICHIGAN, INC,	:	
KMART.COM LLC,	:	
Respondents	:	

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The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions. Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, LLC. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, LLC. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

MOTION OF DARLENE STROEHECKER
FOR RELIEF FROM THE AUTOMATIC STAY

And now, this 5th day of April 2019, comes Darlene Strohecker, (“Ms. Strohecker”) (the “Movant”), by and through her counsel, Mary Ann Kennedy Claraval, Esquire, and files this Motion (the “Motion”) for Relief from the Automatic Stay, and in support thereof states as follows:

1. Mary Ann Kennedy Claraval was granted Admission to Practice Pro Hac Vice, by the Order issued by the Honorable Robert D. Drain, dated April 4, 2019. Exhibit A.

2. On or about May 25, 2017, as the direct and proximate result of the negligence and carelessness of Kmart Store #04479 located at 5050 Jonestown Road, Harrisburg, Dauphin County, Pennsylvania, and their employees and servants herein, and in no manner whatsoever to any act of failure to act on the part of Ms. Strohecker, Ms. Strohecker tripped over a heavy box that was partially exposed from underneath the bottom display shelf, sustained serious and permanent injury.

3. The force and impact of the fall resulted in serious bodily injury, physical pain, inconvenience, humiliation, embarrassment, loss of life’s pleasures, enjoyment and engagement in life’s activities, some of which are either permanent or continuing and the movant will suffer the losses in the future.

4. The Movant wishes to file a Civil Writ of Summons in Dauphin County to toll the statute of limitations. A copy of the Writ of Summons is attached hereto and made part hereof as Exhibit B.

5. On or about November 16, 2018, the Debtor filed for bankruptcy relief in the United States Bankruptcy Court in the Southern District of New York (the “Bankruptcy Court”).

RELIEF SOUGHT

6. The Movant seeks relief from the automatic stay to file a Writ of Summons in order to toll the statute of limitations.

BASIS FOR RELIEF SOUGHT

7. Pursuant to Section 362(d) of the Bankruptcy Code, the Court shall grant relief from the automatic stay for “cause.”

8. Cause for the granting of relief of the automatic stay exists for the Movant for the following reasons:

- a) As the Person Injury Action is a person injury tort action in which jury trials will be held, the Bankruptcy Court lacks jurisdiction to hear and adjudicate the Movant’s claims;
- b) The Personal Injury Action does not involve bankruptcy issues and will not effect the progress of the Debtor’s reorganization; and
- c) Given the actions of the Debtor as regards the events culminating the Movant’s injuries, it is likely that the Movant will prevail in the Personal Injury Action.

9. Additionally, notwithstanding the automatic stay, the Movant is entitled to the relief requested in this Motion to allow her to toll the statute of limitations because it is generally agreed that the automatic stay provisions of the Bankruptcy Code do not effect the liability of the Debtor's insurer for damages caused by the Debtor and that the Creditor may seek to recover from the insurer. See Hawxhurst v. Petitibone Corp., 40 F.3d 175 (7th Cir. 1994); Matter of Edgeworth, 993 F.2d 51 (5th Cir. 1993); Green v. Welch, 956 F.2d 40 (2nd Cir. 1992); In re Western Real Estate Fund, Inc., 992 F.2d 592 (10th Cir. 1990); Jet Florida Sys., Inc., 883 F.2d 970, 972 (11th Cir. 1989). Bankruptcy law is clear that Section 362(a) does not prevent a Creditor from maintaining an action against a Debtor, nominally, for purposes of establishing liability as a prerequisite to proceed against a Debtor's liability insurer. In re Doar, 234 B.R. 203 (Bankr. B.D. Ga. 1999).

10. Further, granting relief from the automatic stay will not result in prejudice to the Debtor, as the Movant has agreed to proceed solely against the Debtor's insurance proceeds. However, the Movant will suffer extreme hardship if she is not granted relief from the automatic stay as she will be unable to continue pursuit of her claim through the Personal Injury Action and the Movant is deprived of the right to recover her claims from the Debtor. This, combined with the circumstances of the case supports granting relief from the automatic stay.

11. No prior request for the relief requested herein has been made to this or any other Court.

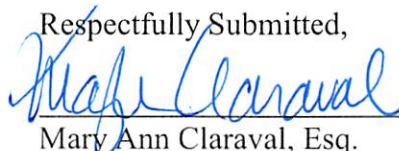
CONCURRENCE MOTION

12. Pursuant to Rule 4001-2 of the L.B.R., counsel for the Movant has contacted Darcell McCarthy at Sedgwick Claims regarding the relief requested herein, and she has not consented to the entry of the Order.

CONCLUSION

WHEREFORE, the Movant respectfully requests that this Court enter an Order, in the form attached hereto, granting the Movant relief from the automatic stay to file a Writ of Summons against the Debtor to toll the statute of limitations and further relief as this Court may deem is just and proper.

Respectfully Submitted,



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Supreme Court I.D. 87347

Attorney for Plaintiff

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ILLINOIS LCC, KMART STORES OF TEXAS	:	
LLC, KMART OF MICHIGAN, INC,	:	
KMART.COM LLC,	:	
Respondents	:	

ORDER GRANTING MOTION OF DARLENE STROHECKER
FOR RELIEF FROM THE AUTOMATIC STAY

Upon consideration of the Motion of Darlene Strohecker, for Relief from the Automatic Stay

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(the "Motion"); after notice and hearing and good cause appearing therefore, it is hereby

ORDERED, that the Motion is GRANTED; and it is

FURTHER ORDERED, that the Movant is granted relief from the automatic stay in order to file a Writ of Summons only to pursue the claims against the Debtor.

FURTHER ORDERED, that the ten (10) day stay period under Bankruptcy Rule 4001(a)(3) is hereby waived.

It is further ORDERED that the stay under Bankruptcy Rule 4001(a)(3) is not applicable in the instant case and Darlene Strohecker may proceed with exercise of its rights upon entry of this order.

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ILLINOIS LCC, KMART STORES OF TEXAS	:	
LLC, KMART OF MICHIGAN, INC,	:	
KMART.COM LLC,	:	
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the attached *Plaintiff's*

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Motion for Relief from Stay with Concurrence of Debtor on all parties receiving CM/ECF notices in this case, and by U.S. Mail to the following:

Via U.S. Mail
Jacqueline Marcus, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

CLARAVAL & CLARAVAL

Date: 4/5/19

By Becky R. Arney
BECKY R. ARNEY